

AN ORDINANCE

BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

AN ORDINANCE AUTHORIZING THE SETTLEMENT OF ALL CLAIMS IN THE CASE OF RODERICK CARTER V. C. D. MACK, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION, CIVIL ACTION FILE NO. 1:02-CV-2728-MHS, IN THE AMOUNT OF \$75,000; AUTHORIZING THE CHIEF FINANCIAL OFFICER TO DISTRIBUTE THE SETTLEMENT AMOUNT FROM FUND ACCOUNT AND CENTER NUMBER 1A01 (GENERAL FUND)-529017 (PROPERTY LIQUIDATION)-T31001 (NON-DEPARTMENTAL); WAIVING CITY OF ATLANTA CODE OF ORDINANCES SECTION 2-783(h) FOR THIS INSTANCE ONLY; AND FOR OTHER PURPOSES.

WHEREAS, Roderick Carter v. C. D. Mack is a case in which the Plaintiff, Roderick Carter, is suing for personal injuries received when he was apprehended and arrested by City of Atlanta Police Officer Charles D. Mack, and for deprivation of his constitutionally and federally protected rights under 42.U.S.C. § 1983; and

WHEREAS, Plaintiff alleges that he was subjected to unnecessary, unreasonable and excessive force, and that he was deprived of his rights secured by the Fourth and Fourteenth Amendments to the United States Constitution, as a result of Officer Mack's use of deadly force to arrest him; and

WHEREAS, Officer Mack maintains that his use of deadly force to apprehend and arrest Plaintiff's occurred after Plaintiff retrieved a black semi-automatic pistol from his waistband while fleeing on foot from Officer Mack and another Atlanta Police Officer; and

WHEREAS, as a result of Officer's Mack use of deadly force, Plaintiff suffered a gunshot wound in his right forearm and right temple region of his head; and

WHEREAS, the Georgia Bureau of Investigations conducted an investigation of the shooting and determined from forensics evidence that Plaintiff was shot by Officer Mack after he had surrendered, discarded his pistol and was lying prone on the ground; and

WHEREAS, Plaintiff has endured pain and suffering and there is a bullet fragment in his head that requires surgical removal; and

WHEREAS, a Motion for Summary Judgment was filed on behalf of Officer Mack, requesting that the Court dismiss Plaintiff's claims as a matter of law; and

WHEREAS, the Court denied summary judgment to Officer Mack, determining that there were issues of disputed material facts which require resolution by a jury; and

WHEREAS, pursuant to 42 U.S.C. §§ 1983 and 1988, if Plaintiff should be awarded compensatory damages at trial, Officer Mack would be required to pay reasonable costs and attorney's fees of the Plaintiff which would likely total more than tens of thousands of dollars; and

WHEREAS, the Plaintiff has agreed to \$75,000.00 as full settlement of all claims against Officer Mack, inclusive of attorney's fees; and

WHEREAS, the City Attorney has done extensive review of the facts and the law and has determined that the City's potential financial exposure in defending Plaintiff's claim is in excess of the settlement amount; and

WHEREAS, the settlement of the case of Roderick Carter v. C. D. Mack shall not be deemed to be an admission of liability or wrongdoing on the part of Officer Mack or any current or former employee or agent of the City of Atlanta; and

WHEREAS, the City Attorney considers it to be in the best interest of the City to pay the amount of \$75,000.00 to settle all claims against Officer Mack.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

SECTION 1. The City Attorney is hereby authorized to settle the case of Roderick Carter v. C. D. Mack in the amount of Seventy Five Thousand Dollars (\$75,000.00).

SECTION 2. That the Chief Financial Officer is authorized to pay to Attorney Charles Pekor of Pekor & DeWoskin, on behalf of Roderick Carter, the sum of \$75,000.00, and to charge such sum to Fund Account and Center No. 1A01(General Fund)-529017 (Property Liquidation)-T31001(Non-Departmental).

SECTION 3. To the extent that Section 2-783(h) of the Code of Ordinances of the City of Atlanta is in conflict herewith, that subsection is waived for this instance only to permit the payment of \$75,000.00 on behalf of Officer Charles D. Mack.